

**Talking Points for DMHC Rescission Reinstatement Announcement**  
**Cindy Ehnes, Director**  
**April 17, 2008**

Today, I am proud to announce an historic step forward for California consumers who have had to suffer the consequences of unfair and unwarranted rescissions of their health coverage in the individual insurance market.

Rescission is a harsh practice -- stripping people of their insurance and causing them to be uninsurable. But today, for the first time, consumers who have fallen victim to unfair rescission practices will get a second chance at health coverage. We are putting our full regulatory and enforcement action to work -- to open the door to health coverage once again for thousands of Californians.

My Department has been taking extraordinary steps to end the unfair rescission of health coverage by health plans. Throughout these last two years, we have said repeatedly that no person who makes an innocent mistake should suffer the devastating consequences of rescission of their health coverage in the middle of treatment. We have said that what is owed is a fair process for consumers.

In that time, we have changed the national landscape on these unfair rescission practices.

- We jumped in through the HMO Help Center to assist individual patients unfairly rescinded in the middle of care & ordered reinstatement and payment of medical claims.
- We've also been reaching out to consumers through our Web site to inform anyone facing a rescission investigation of the right to a review of that case by the DMHC.
- We successfully argued to the *Hailey* Court to articulate a clear legal framework to determine if patients had been unfairly rescinded.
- We challenged a proposed class action settlement that did not provide affected enrollees a chance at reinstatement.
- We hit two health plans with significant and highly-publicized fines -- one for its rescission practices and the other for paying bonuses to employees for rescinding coverage.

In addition we have conducted a careful, systematic investigation of the practices of the five largest health plans offering coverage in the individual market in California. Today, consumers identified in our investigations will get real, tangible relief.

During our investigations, it was obvious in some of the individual case files examined that no reasonable argument could be made that the applicant deliberately misrepresented their health history information or that underwriting was done properly. Therefore, in those 26 cases, I will be ordering immediate reinstatement of these cases which clearly failed to meet the legal standard announced in Hailey v. Blue Shield, announced three weeks ago, which is within my authority under the law. The Knox-Keene Act is clear

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that the DMHC has the authority to reinstate coverage in individual cases. Those individuals and all enrollees wrongfully rescinded will get all their medical claims paid.

In addition to these 26 individual cases, every single rescission by health plans during our 2004 to 2008 investigation period will be reviewed by a fair outside arbiter chosen by the DMHC -- to make certain these consumers receive the fair process they should have been given in the first place. The survey results pointed to serious problems with the health plans' underwriting processes, therefore, we expect that the standard that will be applied by the arbiter to review the propriety of the Plan's rescission determination will be the willful misrepresentation standard.

We are authorizing that arbiter to determine if rescission was proper and to make sure all medical claims are made for those wronged by an improper rescission.

- We will protect the right of innocent consumers to pursue any additional remedies and to be made whole.
- We are requiring that each plan immediately institute uniform business practices to ensure fair process for future enrollees, including simplified applications, notice of investigations and rights of appeal, including strict ethical standards for brokers and agents. I must acknowledge the cooperation of the health plans in making those changes as quickly as possible.

Today, we are acting to bring relief to consumers as quickly as possible. In the very near future, we will be releasing the full details of our investigations and penalties.

As I've said, throughout our investigation, consumers are owed a fair process. With this order, all rescinded enrollees identified during the survey will automatically receive a fair and impartial re-review of their individual circumstances, and be reinstated and have their claims paid. Those not wanting a re-review will need to opt out.

Now, we can move to give consumers the fair process they were owed as fast as possible, without having to sue and wait another two, three or four years for a court to decide in their favor. These people need their medical bills paid now and they need their coverage now!

I have been asked to order a blanket reinstatement for all enrollees rescinded over the last four years. That exceeds my authority - the Knox-Keene Act does not authorize blanket reinstatement and opens the door to lengthy court battles. Our order today, however, will automatically trigger re-review for all who have been rescinded during our investigation time frame.

Blanket reinstatement is also not good policy because we must consider the effect on other health care consumers. While no person who makes an innocent mistake should

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suffer the devastating consequences of rescission, no person who willfully misrepresents their health history should be rewarded.

In conclusion, California health care consumers have been greatly served by the passionate but painstaking work of my outstanding staff in investigating bad rescission practices and getting a fair process moving along for harmed enrollees. Others have joined us and brought allegations against health plans.

I thank all of these advocates.